



Staff Report

Date: July 14, 2016
To: Mayor Hoertkorn and Council Members
From: Heidi Scoble, Planning Manager
Subject: Ordinance 673 Amending Ross Municipal Code Chapters 18.45, Minor Exceptions

Recommendation

Council consider introduction and first reading of Ordinance No. 673 to amend Ross Municipal Code to allow the Town Council to approve a minor exception without having to require the written consent of all adjacent property owners.

Background and Discussion

On December 13, 2012, the Town Council conducted the first reading of Ordinance 641 which included new regulations (Chapter 18.45- Minor Exceptions) to establish a staff approval process to grant exceptions to certain regulations, such as allowing play structures within a setback, and or approving fence heights up to 7 feet tall. Pursuant to Section 18.45.030(b) of the Ross Muni Code, the regulations state that the Town Planner may grant a Minor Exception without conducting a public meeting. The regulations also state that the Town Planner can only grant a Minor Exception provided all of the requisite findings pursuant to Section 18.45.050 can be achieved as follows:

- (a) If the site is in a Special Flood Hazard Area identified on the town Flood Insurance Rate Map, that the Town Floodplain Administrator has indicated that the project will comply with the requirements for a development permit under Chapter 15.36, Flood Damage Prevention Ordinance.
- (b) The building official has indicated the project complies with building code requirements for separation, even if a building permit is not required.
- (c) If the structure is proposed in a required yard setback, that each property owner adjacent to the yard area where the structure or equipment will be located has consented in writing to the installation of the structure.
- (d) No more than two exceptions shall be allowed on any lot.
- (e) If the project involves mechanical equipment that generates noise, such as an air conditioner

or generator, that operation of the equipment will comply with any decibel (db) recommendations, regulations, guidelines and policies in the Town of Ross General Plan and zoning code.

- (f) No practical alternative exists to the proposed exception. For this section, the town may consider factors such as site topography, existing landscaping, aesthetics and noise impacts.
- (g) There will be no detrimental impact (aesthetically or otherwise) to the site, adjacent properties or neighborhood.

For the most part, the regulations are sufficiently written to provide an administrative process at a staff level, with the exception of clearly and directly providing an appeal process to the Council. Where the current regulations are deficient is that although the Town Planner has the ability to refer the Minor Exception to the Council for review and consideration (Section 18.45.030(b) of the Ross Muni Code.), the Council is limited to the same findings as the Town Planner which includes requiring all adjacent neighbors to consent to the requested minor exception. The regulations are written such that the Council's discretion to take action on the project would be limited to whether an adjacent property owner would consent to the project, thus limiting the applicant's due process because they would have to rely on the adjacent property owner to support the Minor Exception (refer to Section 18.45.050(c) of the Ross Muni Code).

Staff supports the more onerous finding at the Town Planner level and suggests the Council should have more discretion in reviewing the merits of the project by not having to rely solely on whether an adjacent property owner would consent to a project. Therefore, staff is recommending the Minor Exception regulations be modified so that written consent by all adjacent property owners is not required as a requisite finding for the Council to take action on a Minor Exception and to provide a clear appeal process as shown in the proposed code amendment depicted in Ordinance 673. A comparison of the existing and proposed regulations is included at Attachment 2.

Fiscal, resource and timeline impacts

No fiscal impact anticipated other than ordinance preparation.

Environmental review (if applicable)

Non-applicable

Attachments

1. Ordinance 673
2. Chapter 18.45, Minor Exceptions, of the Ross Municipal Code- Comparison

ATTACHMENT 1

TOWN OF ROSS

ORDINANCE NO. 673

AN ORDINANCE OF THE TOWN OF ROSS AMENDING ROSS MUNICIPAL CODE CHAPTER 18.45, MINOR EXCEPTIONS, TO REVISE THE REVIEW, APPROVAL, AND APPEAL PROCESS FOR MINOR EXCEPTIONS

The Town Council of the Town of Ross does ordain as follows:

SECTION 1: Section 18.45.030 of the Ross Municipal Code is hereby amended to read as follows:

"18.45.030 Review and approval procedures.

- (a) Application. An application for an exception shall be filed with the town planner on forms prescribed by the town planner, along with any plans or additional information required and the fee as established by a resolution of the town council. The application shall include, in part, evidence supporting the findings required by this chapter.
- (b) Review and Approval Authority. The town planner shall review and approve, conditionally approve, or deny an exception application administratively with no public meeting in accordance with this chapter, if no other entitlements are required and the application meets the findings and criteria in Section 18.45.050.
- (c) Town Council Review. If other approvals are necessary, the application does not meet the findings and criteria in Section 18.45.050, or a hearing has been requested pursuant to Section 18.45.040, the exception application shall be acted upon by the town council concurrently with any related applications if applicable. The town council shall consider the findings and criteria in Section 18.45.050 except that the written consent of all adjacent property owners shall not be required for the approval of a minor exception by town council.
- (d) Appeal. The decision of the town planner may be appealed to town council. Notice of a hearing of appeal shall be made pursuant to Section 18.45.040(b). In determining whether to approve or disapprove a minor exception on appeal, the town council shall consider the findings and criteria in Section 18.45.050 except that written consent of all adjacent property owners shall not be required for the approval of a minor exception by town council."

SECTION 2: Subdivision (b) of Section 18.45.040 of the Ross Municipal Code is hereby revised to read as follows:

“(b) The notice shall provide that a decision will be made by the town planner to approve or disapprove the minor exception application on a date specified in the notice. The notice shall include the name of the applicant, the scheduled date for action, a general explanation of the matter to be considered, the location of the real property that is the subject of the application and that a public hearing before town council may be held pursuant to Section 18.45.030 if requested in writing by any interested person before the specified date for the decision. When a hearing is requested, notice of the hearing shall be provided pursuant to Government Code Section 65091.”

SECTION 3: This Ordinance shall go into effect on thirty (30) days from its adoption, and shall be posted in three public places in Town.

THE FOREGOING ORDINANCE was first read at a regular meeting of the Ross Town Council on the 14th day of June, 2016, and was adopted at a regular meeting of the Ross Town Council on the ____ day of _____, 2016, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Kathleen Hoertkorn, Mayor

ATTEST:

Linda Lopez, Town Clerk

ATTACHMENT 2

Chapter 18.45

MINOR EXCEPTIONS

Sections:

- 18.45.010 Purpose and intent.
- 18.45.020 Applicability.
- 18.45.030 Review and approval procedures.
- 18.45.040 Public notice.
- 18.45.050 Approval findings and criteria.
- 18.45.060 Terms and conditions.
- 18.45.070 Amnesty period.
- 18.45.080 Prior conditions not applicable.

18.45.010 Purpose and intent. The purpose of this chapter is to provide limited relief from the strict application of the development standards specified in this title to allow fences up to 7 feet tall, small accessory structures, and mechanical equipment, where the improvements will not be materially detrimental to the public welfare or injurious to property or improvements in the neighborhood. (Ord. 641 (part), 2013).

18.45.020 Applicability. A minor exception from required side and rear yard setbacks, lot coverage and floor area ratio may be requested from the town planner for the following structures to be located on a lot developed with a single-family residence:

- (a) Fences between 6 and 7 feet in height.
- (a) Small play structures that do not exceed a height of 15 feet, footprint of 600 square feet (e.g. the footprint of structure including any deck, slide, trampoline and/or swing set area) and the primary deck or enclosed area does not exceed 64 square feet.
- (b) Small shed structures used as tool and storage sheds that do not exceed 64 square feet and a height of 6 feet.
- (c) Air conditioners and generators and any associated enclosure. (Ord. 641 (part), 2013).

18.45.030 Review and approval procedures.

(a) Application. An application for an exception shall be filed with the town planner on forms prescribed by the town planner, along with any plans or additional information required and the fee as established by a resolution of the town council. The application shall include, in part, evidence supporting the findings required by this chapter.

(b) Review and Approval Authority. The town planner shall review and approve, conditionally approve, or deny an exception application administratively with no public meeting in accordance with this chapter, if no other entitlements are required and the application meets the findings and criteria in Section 18.45.050.

(c) Town Council Review. If other approvals are necessary, the application does not meet the findings and criteria in Section 18.45.050, or a hearing has been requested pursuant to Section 18.45.040, the exception application shall be filed/acted upon by the town council concurrently with ~~the related applications and shall be acted upon by the town council. The town~~

~~planner may refer an application directly to the town council for consideration. (Ord. 641 (part), 2013).~~ any related applications if applicable. The town council shall consider the findings and criteria in Section 18.45.050 except that the written consent of all adjacent property owners shall not be required for the approval of a minor exception by town council.

(d) Appeal. The decision of the town planner may be appealed to town council. Notice of a hearing of appeal shall be made pursuant to Section 18.45.040(b). In determining whether to approve or disapprove a minor exception on appeal, the town council shall consider the findings and criteria in Section 18.45.050. ~~except that written consent of all adjacent property owners shall not be required for the approval of a minor exception by town council.~~

18.45.040 Public notice.

(a) The town planner shall mail notice of intent to take action on a minor exception at least 10 days prior to the decision to the owner of the property that is the subject of the application and all adjacent property owners as shown on the latest equalized assessment roll. In lieu of using the assessment roll, the Town may use records of the county assessor or tax collector which contain more recent information than the assessment roll.

(b) The notice shall provide that a decision will be made by the town planner to approve or disapprove the minor exception application on a date specified in the notice. The notice shall include the name of the applicant, the scheduled date for action, a general explanation of the matter to be considered, the location of the real property that is the subject of the application and that a public hearing ~~will~~ before town council may be held ~~only~~ pursuant to Section 18.45.030 if requested in writing by any interested person before the specified date for the decision. When a hearing is requested, notice of the hearing shall be provided pursuant to Government Code Section 65091. ~~(Ord. 641 (part), 2013).~~

18.45.050 Approval findings and criteria. The town planner may approve an application for a minor exception if the structure complies with the following criteria:

- (c) If the site is in a Special Flood Hazard Area identified on the town Flood Insurance Rate Map, that the Town Floodplain Administrator has indicated that the project will comply with the requirements for a development permit under Chapter 15.36, Flood Damage Prevention Ordinance.
- (d) The building official has indicated the project complies with building code requirements for separation, even if a building permit is not required.
- (e) If the structure is proposed in a required yard setback, that each property owner adjacent to the yard area where the structure or equipment will be located has consented in writing to the installation of the structure.
- (f) No more than two exceptions shall be allowed on any lot.
- (g) If the project involves mechanical equipment that generates noise, such as an air conditioner or generator, that operation of the equipment will comply with any decibel (db) recommendations, regulations, guidelines and policies in the Town of Ross General Plan and zoning code.
- (h) No practical alternative exists to the proposed exception. For this section, the town may consider factors such as site topography, existing landscaping, aesthetics and noise impacts.
- (i) There will be no detrimental impact (aesthetically or otherwise) to the site, adjacent properties or neighborhood. (Ord. 641 (part), 2013).

18.45.060 Terms and Conditions. In approving a minor exception, the town planner shall have the authority to impose such conditions as deemed necessary to effect the purposes of this title. (Ord. 641 (part), 2013).

18.45.070 Amnesty Period. An amnesty period is established for planning applications for structures that were erected without prior town approval until February 1, 2014. During the amnesty period, planning applications under this chapter shall not be subject to penalty fees as provided in the Ross Municipal Code and by resolution of the town council for work without permit, but instead shall be subject to only the standard application fees. This section shall apply to any complete applications received by the planning department prior to the expiration of the amnesty period. (Ord. 641 (part), 2013).

18.45.080 Prior conditions not applicable. This chapter supersedes any town council conditions limiting construction of shed or play structures imposed prior to the effective date of this section. (Ord. 641 (part), 2013).